

## **REMARKS**

The Office Action mailed 16 October 2007 has been carefully reviewed and, in view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

### **I. Claims Summary**

Claims 57-62 are currently pending in the application, with claims 57, 59, and 61 being independent claims. Claims 61 and 62 are newly added.

The Office Action rejects claims 57-60 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 4,267,710 to Imamichi.

### **II. Discussion of Claims 57 and 58**

Independent claim 57 recites a method of manufacturing a textile for an article of apparel. The method includes a step of selecting a first yarn with a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. A second yarn is also selected with a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to the water. The first degree of dimensional-transformation is greater than the second degree of dimensional transformation. The first yarn and the second yarn are mechanically-manipulated to form a textile with a first surface and an opposite second surface. The first yarn is more concentrated adjacent to the first surface of the textile than the second yarn, and the second yarn is more concentrated adjacent to the second surface of the textile than the first yarn. The textile is modified from a first structure to a second structure upon exposure to the water. The second structure has a plurality of nodes in comparison with the first structure. The nodes extend outward from only the second surface of the textile, and the nodes are distributed to define spaces between the nodes that are located adjacent to each other.

The Office Action rejects claims 57 and 58 as being anticipated by Imamichi. As a summary, independent claim 57 recites that:

- The first yarn is concentrated adjacent to the first surface;
- The second yarn is concentrated adjacent to the second surface;

- The dimensional-transformation of the first yarn is greater than the dimensional-transformation of the second yarn when exposed to water; and
- The nodes extend outward from only the second surface of the textile.

Based upon this discussion, the nodes are formed on the surface of the textile where the yarn with lesser dimensional-transformation is concentrated.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (see MPEP §2129). Imamichi does not teach or suggest a configuration wherein the nodes are formed on the surface of the textile where the yarn with lesser dimensional-transformation is concentrated. Moreover, the concept of nodes forming on a surface of a textile is entirely absent from the disclosure of Imamichi.

In order to overcome this deficiency in Imamichi, the Office Action states that the “Examiner feels that the art of Imamichi would perform the same way (having nodes) as according to the applicant, they have the same structure” (Office Action, 16 October 2007, page 2, lines 8-10). To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill (see MPEP §2131.01, section III). While extrinsic evidence may be utilized to fill a gap in a prior art reference (such as Imamichi), *the extrinsic evidence must make clear that (a) the missing descriptive matter is necessarily present in the thing described in the reference and (b) it would be so recognized by persons of ordinary skill.* An impression or opinion by the Examiner that Imamichi “would perform the same way” is insufficient to fill the gaps in Imamichi.

Based upon the above discussion, the Applicants respectfully submit that independent claim 57 is allowable over Imamichi. In addition, claim 58 should be allowable for at least the same reasons.

### **III. Discussion of Claims 59 and 60**

Independent claim 59 recites a method of manufacturing a textile for an article of apparel. The method includes a step of selecting a first yarn with a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. A

second yarn is selected with a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to the water. The first degree of water absorbency is less than the second degree of water absorbency, and the first degree of dimensional-transformation is less than the second degree of dimensional transformation. The first yarn and the second yarn are mechanically-manipulated to form a textile with a first surface and an opposite second surface. The first yarn is substantially concentrated adjacent to the first surface of the textile, and the second yarn is substantially concentrated adjacent to the second surface of the textile. The textile is modified from a first structure to a second structure upon exposure to the water. The first structure has a configuration wherein the first surface and the second surface are substantially planar, and the second structure has a configuration wherein a plurality of nodes extend outward from the second surface of the textile. The nodes are distributed to define spaces between the nodes that are located adjacent to each other, and the nodes are at least partially formed from both the first yarn and the second yarn.

### *Missing Elements*

The Office Action rejects claims 59 and 60 as being anticipated by Imamichi. As a summary, independent claim 59 recites that:

- The first yarn is concentrated adjacent to the first surface;
- The second yarn is concentrated adjacent to the second surface;
- The dimensional-transformation of the first yarn is less than the dimensional-transformation of the second yarn when exposed to water; and
- The nodes extend outward from the second surface of the textile.

Based upon this discussion, the nodes are formed on the surface of the textile where the yarn with greater dimensional-transformation is concentrated.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (see MPEP §2129). Imamichi does not teach or suggest a configuration wherein the nodes are formed on the surface of the textile where the yarn with greater dimensional-transformation is concentrated. Moreover, the concept of nodes forming on a surface of a textile is entirely absent from the disclosure of Imamichi.

In order to overcome this deficiency in Imamichi, the Office Action states that the “Examiner feels that the art of Imamichi would perform the same way (having nodes) as according to the applicant, they have the same structure” (Office Action, 16 October 2007, page 2, lines 8-10). To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill (see MPEP §2131.01, section III). While extrinsic evidence may be utilized to fill a gap in a prior art reference (such as Imamichi), *the extrinsic evidence must make clear that (a) the missing descriptive matter is necessarily present in the thing described in the reference and (b) it would be so recognized by persons of ordinary skill.* An impression or opinion by the Examiner that Imamichi “would perform the same way” is insufficient to fill the gaps in Imamichi.

#### *Different Recitations*

Independent claim 57 recites that the nodes are formed on the surface of the textile where the yarn with lesser dimensional-transformation is concentrated. Differently, independent claim 59 recites that the nodes are formed on the surface of the textile where the yarn with greater dimensional-transformation is concentrated. As indicated above, the Office Action states that the “Examiner feels that the art of Imamichi would perform the same way (having nodes) as according to the applicant, they have the same structure” (Office Action, 16 October 2007, page 2, lines 8-10). Even if Imamichi discloses the formation of nodes (which Applicants do not concede), Imamichi cannot disclose structures wherein nodes are formed on the surface of the textile (a) where the yarn with lesser dimensional-transformation is concentrated and (b) where the yarn with greater dimensional-transformation is concentrated. That is, it would be inconsistent to imply that the single structure disclosed in Imamichi anticipates the recitations of both independent claims 57 and 59.

Based upon the above discussion, the Applicants respectfully submit that independent claim 59 is allowable over Imamichi. In addition, claim 60 should be allowable for at least the same reasons.

#### **IV. Discussion of Claims 61 and 62**

Independent claim 61 recites a method of manufacturing a textile for an article of apparel. The method includes a step of selecting a first yarn with a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. A second yarn is also selected with a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to the water. The first degree of dimensional-transformation is less than the second degree of dimensional transformation. The first yarn and the second yarn are mechanically-manipulated to form a textile with a first surface and an opposite second surface. The first yarn is more concentrated adjacent to the first surface of the textile than the second yarn, and the second yarn is more concentrated adjacent to the second surface of the textile than the first yarn. The textile is modified from a first structure to a second structure upon exposure to the water. The second structure has a plurality of nodes in comparison with the first structure. The nodes extend outward from only the second surface of the textile, and the nodes are distributed to define spaces between the nodes that are located adjacent to each other.

As with independent claim 59, independent claim 61 recites that the nodes are formed on the surface of the textile where the yarn with greater dimensional-transformation is concentrated. Each of the arguments presented above for independent claim 59 apply, therefore, to independent claim 61.

Based upon the above discussion, the Applicants respectfully submit that independent claim 61 is allowable over Imamichi. In addition, claim 62 should be allowable for at least the same reasons.

#### **V. Conclusion**

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

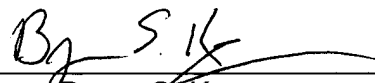
This Amendment is being timely filed by through the Electronic Filing System on 16 January 2008. Should fees be deemed necessary for consideration of this Response, such fees are hereby requested and the Commissioner is authorized to

charge deposit account number 502846 for payment. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at 503.222.5382.

Plumsea Law Group, LLC  
10411 Motor City Drive, Suite 320  
Bethesda, MD 20817  
Telephone: 301.365.9040

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Respectfully Submitted,

  
By: Byron S. Kuzara  
Registration Number 51,255